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No. 88-88

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

STATE OF ILLINOIS,
Petitioner,

vs.

RONALD STRUEBIN, Ancillary Administrator
of the Estate of Joel F. Struebin, Deceased;
KATHLEEN S. POTTER, Ancillary Administrator
of the Estate of James K. Potter; and
DAVENPORT BANK AND TRUST,
Ancillary Administrator of Both Estates,
Respondents.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF IOWA**

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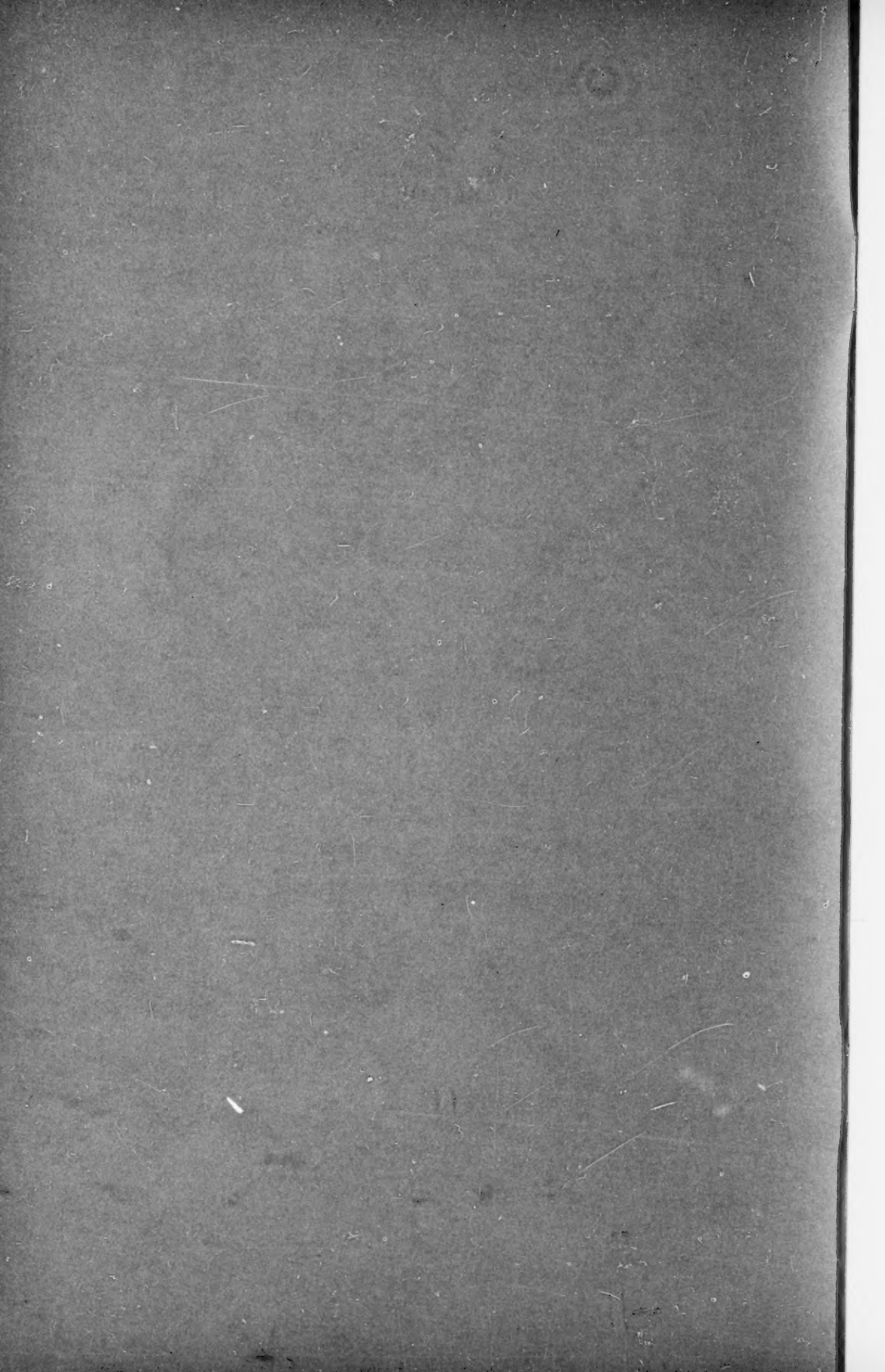


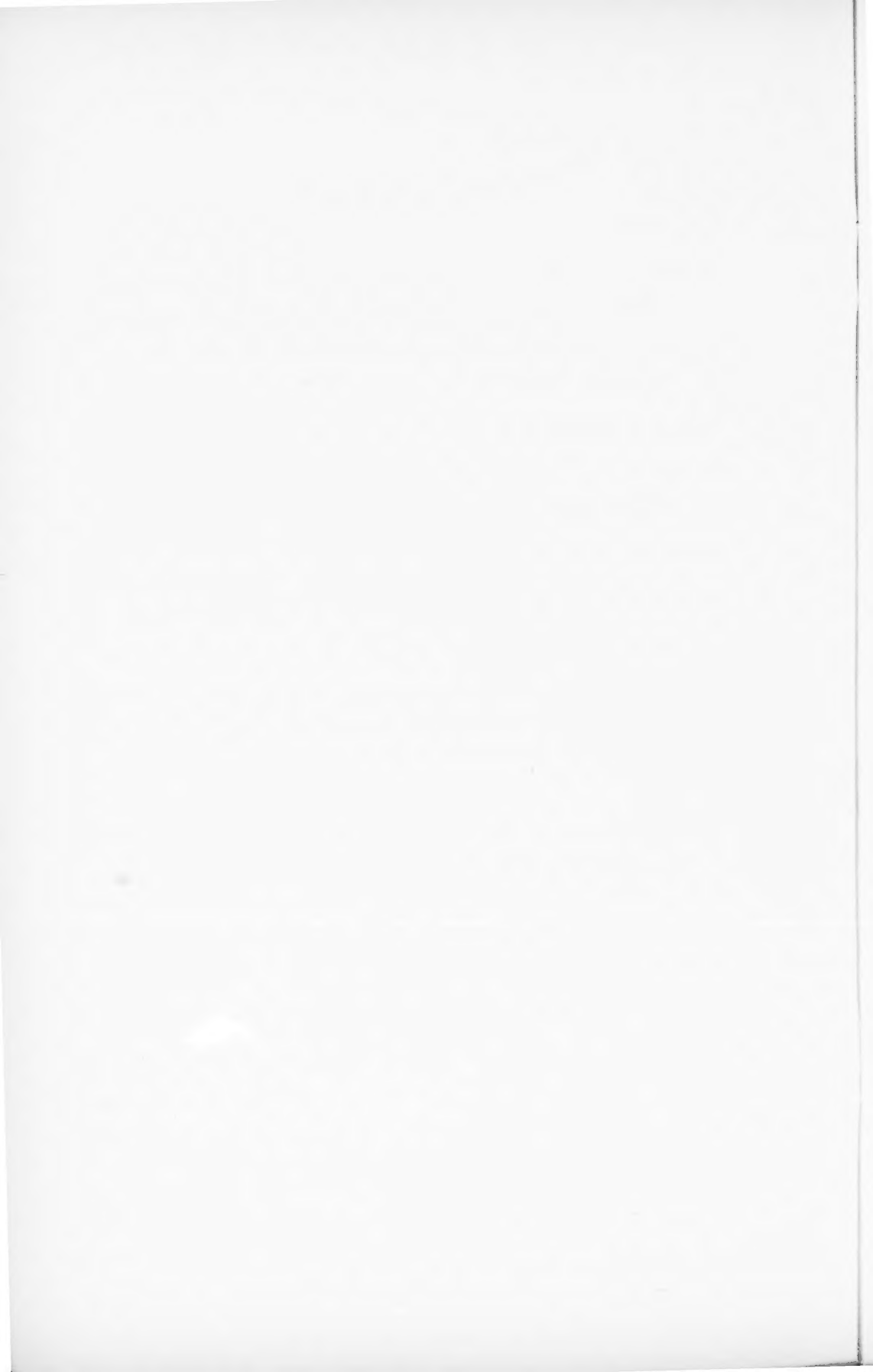
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STATEMENT OF THE CASE

Ronald Struebin and Kathleen Potter are the administrators of the estates of Joel Struebin and James Potter who died on December 8, 1978 when their vehicle skidded on the icy surface of the Interstate 80 bridge over the Mississippi River. The vehicle went over the bridge railing and plunged into the river below. Illinois was responsible for maintaining the bridge by virtue of an interstate compact with Illinois.

On December 5, 1980, plaintiffs Struebin and Potter sued the State of Illinois in an amended petition in the Iowa courts. The State of Illinois appeared specially, claiming that it had sovereign immunity from this suit in the Iowa courts. The state trial court overruled the special appearance and Illinois appealed to the Iowa Supreme Court. The Iowa Supreme Court rejected Illinois' assertion that it was immune from suit in Iowa, relying upon this court's decision in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979). *Struebin v. State*, 322 N.W.2d 84 (Iowa 1982).

The State of Illinois filed a Petition for Writ of Certiorari, which was denied by this court. *The State of Illinois v. Struebin, et al.*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982).

The case was returned to the state trial court for a three and one-half week jury trial. The jury returned verdicts against the State of Illinois and judgments were entered thereon in the total amount of approximately \$118,000.00.

When Illinois did not pay the judgments, plaintiffs sought to enforce their judgments by the issuance of a writ of general execution with a direction to serve notice of garnishment upon Caterpillar Tractor Company. Plaintiffs sought to garnish Illinois withholding taxes deducted from compensation paid at this Iowa plant to employees who were Illinois residents. Illinois again appeared specially, claiming sovereign immunity from execution and garnishment of its property located in Iowa. The trial court sustained this special appearance and dismissed the garnishment proceedings. Plaintiffs then appealed to the Iowa Supreme Court. During oral argument before the Iowa Supreme Court, the Illinois Assistant Attorney General pointed out that Illinois was not unwilling to pay the judgments, and he stated that the vehicle and mechanism provided for such payment under Illinois law was through the Illinois Court of Claims. *Struebin v. State of Ill.*, 383 N.W.2d 516, 519 (Iowa

1986). The Iowa Supreme Court upheld the dismissal of the garnishment proceedings, but on wholly different grounds than those utilized by the trial court. The Iowa Supreme Court concluded, as follows:

“We therefore hold, as a matter of comity and cooperative federalism, we will not open our courts to consider plaintiffs’ proceedings to collect the judgments by garnishment in Iowa until such time as they can allege and prove they were unable to secure payment of these judgments in the Illinois courts. This holding, of course, is without prejudice to plaintiffs’ future return to the Iowa court system to secure payment of their judgments upon the pleading and proof above specified.” *Id.* at 520.

Plaintiffs filed Complaints with the Illinois Court of Claims on April 18, 1986. On July 18, 1986, the Illinois Attorney General filed Motions to Dismiss these complaints, alleging that Plaintiffs had failed to timely file notice within prescribed periods after the date of death of the decedents. Plaintiffs made several requests to the Illinois Court of Claims for rulings on the motions, but received no reply. On December 12, 1986, Plaintiffs filed a Petition for Enforcement of Judgment in the Iowa courts. The Illinois Court of Claims subsequently granted the state’s motion and dismissed the claims. The trial court granted this Petition and ordered that Plaintiffs could secure payment of their judgment in any manner that they could if the State of Illinois were a private, non-governmental litigant.

Illinois again appealed to the Iowa Supreme court, again contending that it had sovereign immunity from statutory collection procedures. The Iowa Supreme Court rejected Illinois’ claim of sovereign immunity and concluded that Plaintiffs were free to garnish funds owed to the State of Illinois that are located within the State of Iowa. *Struebin v. State of Illinois*, 421 N.W.2d 874 (Iowa 1988).

ARGUMENT

I.

THE IOWA SUPREME COURT DID NOT MISINTERPRET OR MISAPPLY NEVADA V. HALL.

It is Illinois which has both misinterpreted and misapplied the decision in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979), not the Iowa Supreme Court. In *Hall*, *supra*, the United States Supreme Court held that the State of Nevada was not immune from suit in California for injuries caused by a state employee's negligence within the State of California. 440 U.S. at 426, 99 S.Ct. at 1191, 59 L.Ed.2d at 428. The Court held that there was nothing in the federal constitution requiring California to grant Nevada immunity from negligence claims.

The court discussed the history of the so-called sovereign immunity doctrine and concluded that "it affords no support for a claim of immunity in another sovereign's courts." 440 U.S. at 416, 99 S.Ct. at 1186, 59 L.Ed.2d at 422.

The Court also rejected Nevada's argument that the United States Constitution provided for such immunity in either Article III, the Eleventh Amendment, or the Full Faith and Credit Clause. 440 U.S. at 421-24, 99 S.Ct. at 1188-90, 59 L.Ed.2d at 425-27. Furthermore, the Court rejected the claim that the constitution implicitly established a union in which states must respect each other's sovereignty by extending such immunity. 440 U.S. at 424-25, 99 S.Ct. at 1190, 59 L.Ed.2d at 427-28.

The Court did not make any distinction between jurisdiction for purposes of obtaining a judgment and jurisdiction for purposes of enforcing that judgment. Both the majority and the dissenters in *Hall*, *supra*, foresaw an attempt to avoid the enforcement of a judgment rendered against a sister state. In footnote 12, the majority said:

"12. Were it an independent sovereign, Nevada might choose to withdraw its money from California banks, or to readjust its own rules as to California's amenability to suit in the Nevada courts. And it might refuse to allow this judgment to be enforced in its courts. But it could not, absent California's consent and absent whatever protection is conferred by the United States Constitution, invoke any higher authority to enforce rules of interstate comity and to stop California from asserting jurisdiction. For to do so would be wholly at odds with the sovereignty of California." 440 U.S. at 417, 99 S.Ct. at 1187, 59 L.Ed.2d at 423.

The *Hall, supra*, dissenters felt that the broad holding of the majority would place severe strains on our system of cooperative federalism. They said:

"States probably will decide to modify their tax-collection and revenue systems in order to avoid the collection of judgments. In this very case, for example, Nevada evidently maintains cash balances in California banks to facilitate the collection of sales taxes from California corporations doing business in Nevada. Under the court's decision, Nevada will have strong incentive to withdraw those balances and place them in Nevada banks so as to insulate itself from California judgments." 440 U.S. at 429, 99 S.Ct. at 1192-93, 59 L.Ed.2d at 430-31 (Blackmun, J., dissenting). See also 440 U.S. at 443, 99 S.Ct. at 1199-1200, 59 L.Ed.2d at 439 (Rehnquist, J., dissenting) (decision will induce states to isolate assets from foreign judgments).

The argument by Illinois that the garnishee, Caterpillar Tractor Company, could be liable in two different states for the same obligation, is also incorrect. Iowa Code §642.10 (1985), expressly provides that such a corporation is exonerated from its liability to Illinois to the extent it must pay under the garnishment. Should Illinois seek to recover this money from the corporation after the corporation pays under this garnishment, Il-

Illinois courts would be obligated to give full faith and credit to the Iowa garnishment discharge. In *Chicago, R.I. & Pac. Ry. v. Strum*, 174 U.S. 710, 718, 19 S.Ct. 797, 800, 43 L.Ed. 1144, 1147 (1899), the Court held that a garnishee's discharge under Iowa law required a Kansas court to give that discharge the same effect it would have had in Iowa. The Supreme Court of Illinois has also recognized this principle. *Taylor v. Taylor*, 44 Ill.2d 139, 142-43, 254 N.E.2d 445, 447 (1969). Double liability to Caterpillar Tractor Company is not a risk under these cases.

Illinois claims in this Petition that the relevant policies of Iowa and Illinois are the same. This is totally incorrect. The Supreme Court of Iowa refused to grant Illinois immunity from garnishment because to do so would be to have Iowa abandon its interest in full compensation for accident victims in the State of Iowa. Furthermore, to grant immunity from garnishment would be an abandonment of Iowa's interest in enforcing judgments rendered in its courts. The interests of Illinois are to extend its statutory limitation on recovery and to refuse to enforce the judgment rendered in the Iowa courts as being untimely under its court of claims act.

The refusal by Iowa to abandon its interests in full compensation for accident victims was the linchpin of its decision in the first appeal of this case. *Struebin v. State*, 322 N.W.2d 84, 87 (Iowa 1982). The United States Supreme Court denied Certiorari of that decision. *Struebin v. State*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982).

In the most recent opinion by the Iowa Supreme Court, that court decided that Illinois might be free to apply its own statute of limitations in its court of claims, but that Iowa should not as a matter of comity apply it in Iowa courts, especially where there was no dispute that the action to enforce was timely in Iowa. Thus, the state policies at issue are not the same, as is contended by Illinois.

II.

THE DECISION OF THE IOWA SUPREME COURT DOES NOT SUBSTANTIALLY INTERFERE WITH ILLINOIS' ABILITY TO PERFORM ITS SOVEREIGN GOVERNMENTAL FUNCTIONS.

Illinois also claims that to permit Appellees to garnish its state tax withholding will interfere with the ability of Illinois to exercise a "purely governmental function - removing snow from public roadways."

This is exactly the same argument made by Illinois when it originally appeared specially in this case in 1980. (See Petition for Writ of Certiorari - Appendix B-4 through 6) This court has already denied Certiorari on that basis.

There is very little distinction between the factual basis of liability in *Hall, supra*, and in this case. The question in *Hall* was whether a Nevada state employee drove his car in California in a negligent manner. The question in *Struebin* is whether an Illinois state employee maintained the interstate bridge in a negligent manner. It is spurious to argue that driving a snow plow is any more a "sovereign obligation" than driving a state car on state business. No "different state policies" as contemplated by Footnote 24 of the *Hall* decision are involved. 440 U.S. at 424, 99 S.Ct. at 1190, 59 L.Ed.2d at 427.

III.

PERMITTING GARNISHMENT HERE DOES NOT POSE A SUBSTANTIAL THREAT TO COOPERATIVE FEDERALISM.

Illinois claims that its sovereign power to levy and distribute taxes will be interfered with by this garnishment. This is also incorrect. The power to tax has already been exercised by Illinois and the funds garnished were already designated as tax revenue owed to Illinois. Iowa is not challenging the governmental authority of Illinois. Iowa is not saying that Illinois can not

deny plaintiffs relief in its own court of claims. What the Iowa Supreme Court is doing is permitting its own courts to enforce a judgment entered in Iowa. The only potential threat to cooperative federalism is the claim by Illinois that Iowa may not enforce its own judgments.

The Iowa Supreme Court gave an example of where such a substantial threat to cooperative federalism would exist. The court cited *Guarini v. New York*, 215 N.J. Super. 426, 521 A.2d 1362 (Ch. Div.), *aff'd*, 215 N.J. Super. 293, 521 A.2d 1294 (App.Div. 1986), *cert. denied*, 108 S.Ct. 71 (1987). In that case, citizens of New Jersey were challenging the authority of New York to exercise authority over two islands on the New Jersey side of the Hudson River. New York had been granted that authority through an interstate compact with New Jersey. The court saw the action as a challenge to the governmental authority of New York and held that permitting the action would, indeed, violate principles of cooperative federalism.

It is difficult to imagine how enforcement of a \$118,000.00 judgment can pose a substantial threat to cooperative federalism or to the ability of Illinois to function as a sovereign entity.

Illinois is attempting to paint this case as some kind of collision between the States of Iowa and Illinois. This is a mischaracterization. The Iowa courts are merely permitting private litigants, who obtained jurisdiction over Illinois, to enforce a money judgment that was obtained pursuant to that jurisdiction.

IV.

THIS COURT SHOULD NOT RECONSIDER ITS DECISION IN NEVADA V. HALL.

Illinois contends that this case is an example of the "severe strains" on the federal system that were mentioned in a dissent in *Nevada v. Hall*, 440 U.S. at 427, 99 S.Ct. at 1191. Illinois ap-

appears to lament that such strains include the fact that its Attorney General has been required to defend this action in the Iowa courts for eight years. (Petition for Writ p. 15) It is difficult to comprehend how Illinois can make such an argument. It is the plaintiffs who have been subjected to endless litigation by the intransigence of Illinois. The plaintiffs in this case sued Illinois in 1980 in reliance upon the Supreme Court decision in *Nevada v. Hall, supra*. Since that time, these litigants have been subjected to three appeals in the Iowa Supreme Court, a three and one-half week jury trial which established Illinois' liability, a claim that was rejected in the Illinois Court of Claims even though the Illinois Assistant Attorney General told the Iowa Supreme Court that they would not resist payment in that court, and now two attempts to appeal this case before the United States Supreme Court.

The decision in *Nevada v. Hall, supra*, has been followed in a multitude of jurisdictions. *Wendt v. County of Osceola, Iowa*, 289 N.W.2d 67 (Minn. 1979); *Daughtry v. Arlington County, Va.*, 490 F.Supp. 307 (D.C.D.C. 1980); *Ehrlich-Boeber & Co., Inc. v. Univ. of Houston*, 427 N.Y.S.2d 599, 49 N.Y.2d 574, 404 N.E.2d 726 (1980); *Peterson v. Texas*, 635 P.2d 241 (Colo. Ct. App. 1981); *Mianecki v. Second Judicial Dist. Ct.*, 99 Nev. 93, 658 P.2d 422, *cert. denied*, 464 U.S. 806, 104 S.Ct. 195, 78 L.Ed.2d 171 (1983); *Biscoe v. Arlington County*, 738 F.2d 1352 (D.C.Cir. 1984); *cert. denied*, 469 U.S. 1159, 105 S.Ct. 909, 83 L.Ed.2d 923 (1985); *Skipper v. Prince George's County*, 637 F.Supp. 638 (D.C.D.C. 1986).

Certiorari has been denied in three of these cases. *Struebin v. State*, 322 N.W.2d 84 (Iowa 1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982); *Mianecki v. Second Judicial Dist. Ct., supra, cert. denied*, 464 U.S. 806, 104 S.Ct. 195, 78 L.Ed.2d 171 (1983); *Biscoe v. Arlington County, supra*, 469 U.S. 1159, 105 S.Ct. 909, 83 L.Ed.2d 923 (1985). The mere fact that a state is now resisting the payment of a judgment obtained pursuant to *Nevada v. Hall* is insufficient reason for the grant of the Writ of Certiorari.

CONCLUSION

There are no special or important reasons for the Court to exercise its discretion and grant review on Writ of Certiorari. This is not a state court decision on an important question of federal law which has not been, but should be, settled by this Court. All pertinent questions in this case were decided by *Nevada v. Hall*. The Petition for a Writ of Certiorari should be denied.

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PROOF OF SERVICE

I, Robert V.P. Waterman, do affirm and declare that I am counsel for Ronald Struebin and Kathleen Potter, administrators of the estates of Joel Struebin and James Potter, and Davenport Bank and Trust, Ancillary Administrators for Both Estates. and that three (3) copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari were served on all of the parties to this appeal by mailing three (3) copies thereof to the respective parties or counsel for said parties, as follows:

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Mailing was made by depositing copies in a United States Postal Service mail box, with first class postage pre-paid in envelopes addressed to the above addressees. This Proof of Service is made in accordance with the requirements of Rule 28.3 and 28.5, Rules of the Supreme Court of the United States.

Robert V.P. Waterman
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Kathleen Potter and Davenport
Bank and Trust